



January 29, 1999

SENATE BILL No. 534

DIGEST OF SB 534 (Updated January 26, 1999 11:59 am - DI 75)

Citations Affected: IC 23-2.

Synopsis: Various securities matters. Increases the penalty for violation of securities laws in certain circumstances. Allows the securities commissioner to adopt rules and orders to prohibit deceptive, fraudulent, or abusive telemarketing or telephone solicitation of securities. Expands the scope of reasons for which the securities commissioner may deny, suspend, revoke, or bar an entity under the jurisdiction of the securities commissioner.

Effective: July 1, 1999.

Mills

January 21, 1999, read first time and referred to Committee on Commerce and Consumer Affairs.
January 28, 1999, reported favorably — Do Pass.

SB 534—LS 7654/DI 94+



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January 29, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

SENATE BILL No. 534

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 23-2-1-11 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) The
3 commissioner may by order deny, suspend, or revoke a registration,
4 censure a registrant or an officer, a director, a partner, or a person
5 performing similar functions for a registrant, or other persons who
6 offered or sold securities in Indiana, or bar a registrant or an officer, a
7 director, a partner, or a person performing similar functions for a
8 registrant or other persons who offered or sold securities in Indiana
9 from employment with a registered broker-dealer or an investment
10 adviser if the commissioner finds that the order is in the public interest
11 and that the applicant or registrant or, in the case of a broker-dealer or
12 an investment adviser, a partner, an officer, or a director or a person
13 performing similar functions or a person directly or indirectly
14 controlling the broker-dealer or an investment adviser, or other persons
15 who offered or sold securities in Indiana has done any of the following:
16 (1) Has filed an application for registration which, as of its
17 effective date or as of a date after filing in the case of an order

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denying effectiveness, was incomplete in any material respect or contained a statement that was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact.

(2) Has knowingly violated or failed to comply with this chapter or a rule under this chapter.

(3) Is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving any aspect of the securities business.

(4) Is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, an agent, an investment adviser, or an investment adviser representative.

(5) Is the subject of an order entered within the past five (5) years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking registration as a broker-dealer, an agent, an investment adviser, an investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, is the subject of an order of the Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a-78kk), or is the subject of a United States post office fraud order, but:

(A) the commissioner may not institute a revocation or suspension proceeding under this subdivision more than one (1) year from the date of the order relied on or from the date of the application for registration, whichever is later; and

(B) the commissioner may not enter an order under this subdivision on the basis of an order under another law, a Securities and Exchange Commission order, or a United States post office fraud order, unless that order was based on facts that would currently constitute a ground for an order under this section, or unless an order was not disclosed on the application for registration.

(6) Has engaged in dishonest or unethical practices in the securities business.

(7) Is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the sense that the person cannot meet the person's obligations as they mature. The commissioner may not enter an order against a broker-dealer or an investment adviser under this subdivision without a finding of insolvency as to the broker-dealer or investment adviser.



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(8) Has not complied with the conditions imposed by sections 9(e) and 9.1 of this chapter.

(9) Is lacking in integrity, is not of good business reputation, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business.

(10) Has failed to pay the proper filing fee. The commissioner may enter only a denial order under this subdivision and the commissioner shall vacate the order when the deficiency has been corrected.

(11) Has unreasonably delayed the delivery of securities purchased or the remittance for securities sold.

(12) Has failed to give notice in writing to a customer whether the broker-dealer is dealing as a principal or as agent, and if as an agent, whether for buyer or seller, or both.

(13) Has failed to deliver the purchased stock certificate or other securities to a buyer or payment to a seller of securities within forty-five (45) days of the date of the transaction. (If, within forty-five (45) days of the date of the transaction, the broker-dealer or the broker-dealer's agent notifies in writing the commissioner that delivery will not be completed within the statutory period, and a written notification gives good and sufficient cause for the delay, this provision for suspension shall not be applicable. Good and sufficient cause shall include but not be limited to delay caused by a transfer agent after delivery of securities to the same for transfer on the records of the corporation. The forty-five (45) day period shall not be regarded as a standard of reasonableness for the purposes of subdivision (11).)

(14) Has failed reasonably to supervise the person's agents or employees if the person is a broker-dealer or the person's investment adviser representatives or employees if the person is an investment adviser to assure their compliance with this chapter.

(15) Has been convicted within ten (10) years before the date of the application or registration of a crime involving fraud or deceit or has a felony conviction (as defined in IC 35-50-2-1) within five (5) years before the date of application or registration.

(16) Is on the most recent tax warrant list supplied to the commissioner by the department of state revenue.

(17) Has, within the last ten (10) years, been the subject of an adjudication or determination by a court of competent jurisdiction, **by the Securities and Exchange Commission, by**

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1 **the Commodity Futures Trading Commission**, or by a
 2 securities or commodities agency or administrator of another
 3 state, and, after notice and opportunity for a hearing, has been
 4 found to have willfully violated the Securities Act of 1933 (15
 5 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15
 6 U.S.C. 77b et seq.), the Investment Advisers Act of 1940 (15
 7 U.S.C. 80b et seq.), the Investment Company Act of 1940 (15
 8 U.S.C. 80a et seq.), the Commodity Exchange Act (7 U.S.C. 1 et
 9 seq.), or the securities or commodities law of any other state.

10 (18) Has been denied the right to do business in the securities
 11 industry, or the person's respective authority to do business in the
 12 securities, **commodities, or insurance** industry has been revoked
 13 **or suspended** by any other state, federal, or foreign governmental
 14 agency or self-regulatory organization for cause.

15 **(19) Is the subject of a cease and desist order entered by the**
 16 **Securities and Exchange Commission, by the Commodity**
 17 **Futures Trading Commission, or by a securities or**
 18 **commodities agency or administrator of another state.**

19 A person described in subdivisions (1) through ~~(18)~~ **(19)** violates this
 20 chapter.

21 (b) The following provisions govern the application of subsection
 22 (a)(9):

23 (1) The commissioner may not enter an order against a
 24 broker-dealer on the basis of the lack of qualification of a person
 25 other than:

- 26 (A) the broker-dealer if the broker-dealer is an individual; or
- 27 (B) an agent of the broker-dealer.

28 (2) The commissioner may not enter an order solely on the basis
 29 of lack of experience if the applicant or registrant is qualified by
 30 training or knowledge, or both.

31 (3) The commissioner shall consider that an agent who will work
 32 under the supervision of a registered broker-dealer need not have
 33 the same qualifications as a broker-dealer, and that an investment
 34 adviser representative who will work under the supervision of a
 35 registered investment adviser need not have the same
 36 qualifications as an investment adviser.

37 (4) The commissioner may by rule provide for an examination,
 38 including an examination developed or approved by an
 39 organization of securities administrators, which may be written or
 40 oral or both, to be taken by a class of or all applicants. The
 41 commissioner may by rule or order waive the examination
 42 requirement for a person or class of persons if the commissioner



determines the examination is not necessary for the protection of the public.

(5) The commissioner may not enter an order against an investment adviser on the basis of the lack of qualification of a person other than:

(A) the investment adviser if the investment adviser is an individual; or

(B) an investment adviser representative.

(6) The commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or an agent. When the commissioner finds that an applicant for a broker-dealer registration is not qualified as an investment adviser, the commissioner may by order condition the applicant's registration as a broker-dealer upon the applicant's not transacting business in Indiana as an investment adviser.

(c) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to the commissioner when registration became effective, unless the proceeding is instituted within the next one hundred eighty (180) days. The commissioner may by order summarily postpone or suspend registration pending final determination of a proceeding under this section concerning an application for registration or renewal of registration. Upon the entry of the order, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent or an investment adviser representative, that:

(1) the order has been entered and the reasons for the order; and

(2) within fifteen (15) days after receipt of a written request the matter will be set for hearing.

If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) Withdrawal from registration as a broker-dealer, an agent, an investment adviser, or an investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within a shorter period of time as the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke, suspend, or impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted,



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1 withdrawal becomes effective at the time and upon the conditions as
 2 the commissioner by order determines. If no proceeding is pending or
 3 instituted and withdrawal automatically becomes effective, the
 4 commissioner may institute a revocation or suspension proceeding
 5 under subsection (a) within one (1) year after withdrawal became
 6 effective and enter a revocation or suspension order as of the last date
 7 on which registration was effective.

8 (e) No order may be entered under this section except for orders of
 9 postponement entered under subsection (c) or orders of suspension
 10 under subsection (i), without appropriate prior notice to the applicant
 11 or registrant (as well as the employer or prospective employer if the
 12 applicant or registrant is an agent or an investment adviser
 13 representative), opportunity for hearing, and written findings of fact
 14 and conclusions of law.

15 (f) If the commissioner finds that a registrant or applicant for
 16 registration is no longer in existence or has ceased to do business as a
 17 broker-dealer, an agent, an investment adviser, or an investment
 18 adviser representative, is subject to an adjudication of mental
 19 incompetence or to the control of a committee, conservator, or
 20 guardian, or cannot be located after reasonable search, the
 21 commissioner may by order cancel the registration or application.

22 (g) For purposes of proceedings by the commissioner under this
 23 chapter with respect to the registration of an agent or an investment
 24 adviser representative, the commissioner may institute proceedings
 25 under subsection (a) within one (1) year after termination or expiration
 26 of a registration and enter a revocation or suspension order as of the
 27 last date on which the registration was effective.

28 (h) The commissioner shall notify the insurance commissioner when
 29 an order is issued under this section denying, suspending, or revoking
 30 registration.

31 (i) The commissioner may by order summarily suspend a
 32 registration pending a final determination of a proceeding under this
 33 section. Upon the entry of the order, the commissioner shall promptly
 34 notify the registrant, as well as the employer if the registrant is an
 35 agent, that the order has been entered. The notice must include a
 36 statement:

37 (1) of reasons for entry of the order; and

38 (2) that within fifteen (15) days after the receipt of a written
 39 request the matter will be set down for a hearing.

40 If a hearing is not requested and none is ordered by the commissioner,
 41 the order remains in effect until it is modified or vacated by the
 42 commissioner. If a hearing is requested or ordered, the commissioner,

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after notice of and opportunity for hearing, may modify or vacate the order or extend it until a final determination.

SECTION 2. IC 23-2-1-12.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 12.2. (a) The commissioner may adopt rules and orders to prohibit deceptive, fraudulent, or abusive telemarketing solicitation activities by broker-dealers, broker-dealer agents, investment advisers, investment adviser representatives, or other persons subject to this chapter.**

(b) A rule or an order adopted by the commissioner under subsection (a) may include, but is not limited to:

(1) a definition of deceptive, fraudulent, or abusive telemarketing and telephone solicitation activities;

(2) a list of practices, activities, and criteria that are symptomatic of deceptive, fraudulent, or abusive telemarketing and telephone solicitation activities;

(3) a requirement that telemarketers and telephone solicitors may not undertake a pattern of unsolicited telephone calls that a reasonable person would consider coercive or abusive of a person's privacy; and

(4) the procedures and practices that broker-dealers, broker-dealer agents, investment advisers, investment adviser representatives, or any other person subject to this chapter must adhere to when engaging in telemarketing and telephone solicitation activities.

(c) A person who violates a rule or order adopted by the commissioner under this section violates this chapter.

SECTION 3. IC 23-2-1-19.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 19.5. (a) If the commissioner determines, after a hearing, that any person has violated this chapter, the commissioner may, in addition to or in lieu of all other remedies, impose a civil penalty upon any person who has violated this chapter. This penalty may not exceed ten thousand dollars (\$10,000) for each violation of this chapter found to have been committed. However, if the victim of the person's conduct was an individual not less than sixty (60) years of age, or if a person violates a rule or order adopted under section 12.2 of this chapter, the penalty may not exceed thirty thousand dollars (\$30,000) for each violation that was committed.** An appeal from the decision of the commissioner imposing a civil penalty under this subsection may be taken by any aggrieved party pursuant to section 20 of this chapter.

(b) The commissioner may bring any action in the circuit or superior



1 court of Marion County to enforce payment of any penalty imposed
2 under subsection (a).

3 (c) Penalties collected under this section shall be deposited in the
4 securities division enforcement account established under section 15(c)
5 of this chapter.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 534, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 534 as introduced.)

MILLS, Chairperson

Committee Vote: Yeas 10, Nays 0.

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